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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. [redacted]5, Original

THE STATE OF NEBRASKA,
Complainant,
v.
THE STATE OF WYOMING.

MOTION OF PLATTE VALLEY PUBLIC POWER AND IRRIGATION DISTRICT FOR LEAVE TO INTERVENE AND PETITION IN INTERVENTION.

ARTHUR F. MULLEN,
Attorney for Platte Valley Public Power and Irrigation District.

GEORGE F. SHEA,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 13, Original

THE STATE OF NEBRASKA,
Complainant,

v.

THE STATE OF WYOMING.

MOTION OF PLATTE VALLEY PUBLIC POWER AND IRRIGATION DISTRICT FOR LEAVE TO INTERVENE IN THE ABOVE ENTITLED SUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Platte Valley Public Power and Irrigation District, your petitioner, respectfully alleges and shows as follows:

1. Petitioner is a public corporation, organized and existing under the laws of the State of Nebraska pursuant to and in accordance with the provisions of Chapter 86 of the Laws of Nebraska, 1933.

2. The above entitled cause was commenced in this Court on October 8, 1934, by a motion for leave to file a Bill of

Complaint in Equity. Leave to file such bill was granted on October 15, 1934. Defendant moved to dismiss the Bill of Complaint on January 21, 1935, which motion, after argument before this Court, was denied on April 1, 1935. Defendant filed its answer herein on the 3rd day of June, 1935.

3. Said Bill of Complaint asks this Court to find and determine the equitable shares of the waters of the North Platte River to which the complainant is entitled and the respective priorities of the various appropriators of such waters in Wyoming and Nebraska. It also asks that defendant be enjoined and restrained from permittting wrongful impounding of water for storage purposes; that defendant be enjoined and restrained from diverting and permitting the diversion to Wyoming junior appropriators of water to the detriment of Nebraska senior appropriators; that this Court fix and determine the priority of the Casper-Alcova and Seminoe Reservoir projects hereinbefore referred to, in their relation to such Nebraska appropriators as have appropriations upon said North Platte and Platte Rivers; that defendant be enjoined from permitting the impounding of any waters for storage in any reservoir at any time when said waters are needed for direct flow appropriators or in any event when said waters are needed by appropriators whose rights are senior to the priority date of such reservoir; that defendant be, by order of this Court, required to permit the waters of the North Platte River to reach the State line between Nebraska and Wyoming in such quantity as will afford to Nebraska its equitable apportionment of the water of the North Platte River and for that purpose that defendant be required to prevent the appropriation in Wyoming by appropriators in that State of waters to the detriment of the right of Nebraska to its equitable apportionment of

the waters of the North Platte River as determined by this Court; and also for such other, further and different relief as to the Court may seem just and equitable.

The answer to the Bill of Complaint in substance sets up as a first defense, that complainant had full knowledge of all the facts alleged in the Bill of Complaint for a period of 25 years and having such knowledge took no action to prevent the same; that the persons who had secured appropriations of the use of the water during that period had expended large sums of money; that complainant in commencing and maintaining the suit "is so doing only in representing private interests of residents of the State of Nebraska" and that complainant is not an appropriator or user of water from the North Platte River and "does not own or have any water rights which are involved in this suit"; that all persons in the State of Nebraska which complainant purports to represent at the time of making filings for the purpose of appropriating water from the North Platte River had full knowledge and notice of all prior appropriations by prior appropriators in the State of Wyoming, and that none of said appropriators have taken any steps to prevent the course of procedure which had at all times heretofore been followed by defendant or to secure any other or different method of appropriation and use of the waters of the North Platte River or any other or different method of dividing the waters of said river as between appropriators in the State of Nebraska and appropriators in the State of Wyoming through the intervention of any court prior to the commencement of this action, but, at all times had recognized and abided by the use and division of the waters as made by defendant; that by reason of these facts the complainant is barred by Statute of Limitations and by laches from maintaining the suit.

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As a second defense, defendant in substance alleges that it at all times has permitted to flow from its boundaries into the boundaries of complainant a full share and portion of the waters of such stream to which appropriators, residing in Nebraska, were entitled; that in addition all the waters of the North Platte River which were then unappropriated were, on December 6, 1904, completely appropriated by the Secretary of the Interior for the purpose of reclaiming and developing public lands in Wyoming and Nebraska; that, pursuant to such appropriation, the Bureau of Reclamation of the United States continuously proceeded with the reclamation and development of such lands and that said appropriation of December 6, 1904, has at all times been in full force and effect and that none of the appropriations referred to in the Bill of Complaint, since December 6, 1904, have any priority over the appropriation of said water by the Secretary of the Interior of the United States, and that all such appropriations, if any exist, are junior and inferior to said appropriation of the Secretary of the Interior of the United States.

As a third defense, defendant specifically denies certain allegations of the Bill of Complaint.

4. Petitioner has an interest in the litigation in the above entitled cause against defendant therein, arising out of the facts alleged in your petitioner's proposed Petition in Intervention, a copy of which is attached hereto and made a part hereof.

5. The interest of the petitioner in the above entitled suit is such that its intervention in this cause is necessary because of the following facts:

By virtue of the provisions of Chapter 86 of the Laws of Nebraska, 1933, petitioner is authorized and empowered by and through its Board of Directors to construct and

maintain irrigation works and to construct or otherwise acquire, maintain and operate electrical plants and systems, for generation, distribution, transmission and sale of electrical energy for any and every useful purpose.

In June, 1933, petitioner filed an application with the Public Works Administration of the United States for monies to construct facilities which would enable it to use the waters of the North Platte River for such agricultural and manufacturing purposes. In November, 1933, the Public Works Administration allotted monies to petitioner for such purposes. Since that time petitioner, diligently and as expeditiously as possible, has done all things necessary to bring to completion the construction of such facilities.

On January 13, 1934, this petitioner made Application Number 2350, at 6:30 P. M., for 325 cubic feet of water per second from the North Platte River for storing 140,000 acre feet of water in the Sutherland Reservoir, that being one of the reservoirs of the petitioner for irrigation and power purposes. This application was approved and allowed by the State of Nebraska on said date, and is now in full force and effect.

On January 13, 1934, this petitioner made Application Number 2352, at 6:31 P. M., for 25 cubic feet of water per second from the North Platte River for storing 34,000 acre feet of water in petitioner's regulating reservoir for irrigation and power purposes. This application was approved and allowed by the State of Nebraska, and is now in full force and effect.

On January 13, 1934, this petitioner made Application Number 2353, at 6:32 P. M., for 975 cubic feet of water per second from the North Platte River to be used by the petitioner for hydro-electric power developments. This application was approved and allowed by the State of Nebraska, on said date, and is now in full force and effect.

On February 8, 1934, this petitioner made Application Number 2361, at 11:15 A. M., for 1,000 cubic feet of water per second from the North Platte River for 150,000 acre feet of water per annum in the reservoir of this petitioner. This application was approved and allowed by the State of Nebraska on said date, and is now in full force and effect.

At this time your petitioner has undertaken to borrow Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000.00) from the Public Works Administration of the United States for the purpose of constructing the necessary facilities to make possible the agricultural and manufacturing uses of the waters of the North Platte River for which your petitioner was organized, and the Public Works Administration has agreed to loan this amount for such purposes, and in addition thereto has agreed to grant to your petitioner Two Million Four Hundred and Fifty Thousand Dollars ($2,450,000.00) for the same purposes. Of said aggregate sum, the Public Works Administration has already advanced approximately Five Million Five Hundred Thousand Dollars ($5,500,000.00), of which approximately Five Million Dollars ($5,000,000.00) has already been actually used in constructing such facilities. The sum borrowed to construct such facilities cannot be liquidated merely from the income which your petitioner may receive from its irrigation facilities. To liquidate, your petitioner requires sufficient water under its filings which have been allowed, to operate its power facilities.

The failure or depletion of the water supply in the North Platte River because of acts of defendant or its citizens, more fully described in the attached Petition in Intervention, will work economic disaster to petitioner, making it impossible for it to repay the loan which it has received from the Public Works Administration of the United States.

There are other filings in the State of Nebraska that have been approved and allowed which are prior to the filings

made in the State of Wyoming. Such filings cover domestic, agricultural and manufacturing uses. To ascertain petitioner's rights and priorities as between it and the State of Wyoming and its citizens, it is necessary, not only to ascertain the rights between the petitioner and other persons in Nebraska, both corporate and individual, who have made water filings covering domestic, agricultural or manufacturing uses, but also what the rights are of such Nebraska persons, both corporate and individual, against the State of Wyoming, and any persons, either corporate or individual, whose filings for any use have been allowed in that State.

WHEREFORE, petitioner prays that this Court make an order granting it leave to file the attached Petition in Intervention herein against the State of Wyoming, defendant, and for such other and further relief as to this Court seems just.

Dated: October 10, 1935.

ARTHUR F. MULLEN,
Attorney for Petitioner,
First National Bank Bldg., Omaha, Nebraska.

GEORGE F. SHEA,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 13, Original

THE STATE OF NEBRASKA,

Complainant,

v.

THE STATE OF WYOMING.

PETITION IN INTERVENTION.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the Platte Valley Public Power and Irrigation District, a public corporation, organized and existing under and by virtue of the laws of the State of Nebraska, by its attorney, Arthur F. Mullen, upon the direction of its Board of Directors, files this Petition in Intervention and respectfully sets forth:

First.

That on the 8th day of October, 1934, the State of Nebraska commenced a suit by filing a motion for leave to

file a Bill of Complaint in Equity against the State of Wyoming. Leave was granted on October 15, 1934. Defendant moved to dismiss this Bill of Complaint on January 21, 1934, which motion was denied on April 1, 1935.

Said Bill of Complaint asks this Court to determine the equitable shares of the waters of the North Platte River to which the complainant was entitled, and the respective priorities of the various appropriators of such w ters in Wyoming and Nebraska; also, that defendant be enjoined and restrained from permitting the wrongful impounding of the waters for storage purposes in manners specifically described; that defendant be enjoined and restrained from diverting and permitting the diversion of waters to Wyoming junior appropriators to the detriment of Nebraska senior appropriators; that the Court fix and determine the priorities of the Casper-Alcova and Seminoe Reservoir Projects, specifically referred to in the Bill of Complaint, in their relation to such Nebraska appropriators as had appropriations upon the North Platte and Platte Rivers; that defendant be enjoined from permitting the impounding of any waters for storage in any reservoir at any time when said waters are needed for direct flow appropriators or in any event when said waters are needed by appropriators whose rights are senior to the priority date of such reservoir; that defendant by order of this Court be required to permit the waters of the North Platte River to reach the State line between Nebraska and Wyoming in such quantity as will afford to Nebraska its equitable apportionment of the waters of the North Platte River, and for that purpose that defendant be required to prevent the appropriation in Wyoming by appropriators in that State of waters to the detriment of the right of Nebraska to its equitable apportionment of the waters of the North Platte River as determined by this Court.

Thereafter, on June 3, 1935, defendant answered said Bill of Complaint in Equity, which answer is on file in this Court, reference thereto being had.

Second.

The petitioner is a public corporation, organized and existing under and by virtue of the laws of the State of Nebraska, pursant to and in accordance with the provisions of Chapter 86 of the Laws of Nebraska, 1933, sometimes termed the "enabling act." By virtue of said "enabling act," the petitioner is authorized and empowered, by and through its Board of Directors, to construct and maintain irrigation works and to construct or otherwise acquire and maintain and operate electrical plants and systems, for generation, distribution, transmission and sale of electrical energy for any and every useful purpose.

In June, 1933, petitioner filed an application with the Public Works Administration of the United States for monies to construct facilities which would enable it to use the waters of the North Platte River for such agricultural and manufacturing purposes. In November, 1933, the Public Works Administration allotted monies to petitioner for such purposes. Since that time petitioner, diligently and as expeditiously as possible, has done all things necessary to bring to completion the construction of such facilities.

On January 13, 1934, this petitioner made Application Number 2350, at 6:30 P. M., for 325 cubic feet of water per second from the North Platte River for storing 140,000 acre feet of water in the Sutherland Reservoir, that being one of the reservoirs of the petitioner, for irrigation and power purposes. This application was approved and allowed by the State of Nebraska on said date, and is now in full force and effect.

On January 13, 1934, this petitioner made Application Number 2352, at 6:31 P. M., for 25 cubic feet of water per second from the North Platte River for storing 34,000 acre feet of water in petitioner's regulating reservoir for irrigation and power purposes. This application was approved and allowed by the State of Nebraska, and is now in full force and effect.

On January 13, 1934, this petitioner made Application Number 2353, at 6:32 P. M., for 975 cubic feet of water per second from the North Platte River to be used by the petitioner for hydro-electric power developments. This application was approved and allowed by the State of Nebraska on said date, and is now in full force and effect.

On February 8, 1934, this petitioner made Application Number 2361, at 11:15 A. M., for 1,000 cubic feet of water per second from the North Platte River for 150,000 acre feet of water per annum in the reservoir of this petitioner. This application was approved and allowed by the State of Nebraska on said date, and is now in full force and effect.

At this time your petitioner has undertaken to borrow Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000.00) from the Public Works Administration of the United States for the purpose of constructing the necessary facilities to make possible the agricultural and manufacturing uses of the waters of the North Platte River for which your petitioner was organized, and the Public Works Administration has agreed to loan this amount for such purposes and in addition thereto to grant to your petitioner Two Million Four Hundred and Fifty Thousand Dollars ($2,450,000.00) for the same purposes. Of said aggregate sum, the Public Works Administration has already advanced approximately Five Million Five Hundred Thousand Dollars ($5,500,000.00) of which approximately Five Million Dollars ($5,000,000.00) has already been actually used in constructing such facilities. The sum borrowed to

construct such facilities cannot be liquidated merely from the income which your petitioner may receive from its irrigation facilities. To liquidate, your petitioner requires sufficient water under its filings which have been allowed to operate its power facilities.

Your petitioner proposes to produce and sell 125,000,000 kilowatt hours of electricity per annum. There is a definite need for this power. Before the Public Works Administration of the United States approved its loan to petitioner, it found that there was such need. Your petitioner will bring electricity to many people who, heretofore, were unable to secure it.

The failure or depletion of the water supply in the North Platte River, because of the acts and threatened acts of defendant or its citizens, more fully described hereafter, will work economic disaster to petitioner, making it impossible for it to repay the loan which it has received from the Public Works Administration of the United States, and further, will make it impossible for it to extend through its facilities the irrigation and power uses of the water, for which it was organized.

There are other filings in the State of Nebraska that have been approved and allowed which are prior to the filings made in the State of Wyoming. Such filings cover domestic, agricultural and manufacturing uses. To ascertain the rights and priorities of petitioner, as between it and the State of Wyoming and its citizens, it is necessary to ascertain:

(1) the rights between the petitioner and other persons in Nebraska, both corporate and individual, who have made water filings on the North Platte and Platte Rivers which have been allowed, covering domestic, agricultural or manufacturing uses;

(2) the rights between petitioner and any persons in Nebraska who may have filed applications for water from the

North Platte or Platte Rivers which have not yet been allowed, including those which may not be allowed because such persons failed to comply with the requirements of Nebraska law, covering the filing of such applications, and

(3) what the rights are of all such Nebraska persons, both those whose filings have been allowed in Nebraska and those whose filings have not been allowed, against the State of Wyoming and any persons, either corporate or individual, whose filings have been allowed in that State.

Third.

The North Platte River is a non-navigable river which has its source in the mountains of Colorado, and drains about eighteen hundred square miles in that State; it crosses the boundary between the States of Colorado and Wyoming at a point approximately one hundred twenty miles west of the eastern boundary of the State of Wyoming, and from the point of its entry into the State of Wyoming it flows in a general northerly direction approximately one hundred sixty miles to Casper, Wyoming, thence approximately fifty-five miles east to Douglas, Wyoming, thence in a southeasterly direction approximately one hundred miles to the Wyoming-Nebraska State line, continuing in the same direction approximately two hundred miles to its confluence with the South Platte River at the City of North Platte, Nebraska, to form the Platte River. From the City of North Platte, Nebraska, the said Platte River, so formed by the junction of the said North Platte and South Platte Rivers, flows in a general southeasterly direction approximately one hundred ten miles to the City of Kearney, Nebraska, thence in a general northeasterly direction approximately one hundred fifty miles to the City of Fremont, Nebraska, and thence in a general southeasterly direction sixty miles to the City of Plattsmouth, Nebraska, where it

empties into the Missouri River on the eastern boundary of the State of Nebraska. A map of such area is attached to the Bill of Complaint.

Fourth.

The drainage area of the said North Platte River in Wyoming is approximately twenty-two thousand, four hundred (22,400) square miles; and in the State of Nebraska, down to and including the City of Grand Island, Nebraska, approximately thirteen thousand (13,000) square miles. The drainage area of the said North Platte River in the State of Nebraska, between the Wyoming-Nebraska State line and the City of North Platte, and the drainage area of the Platte River from the City of North Platte to the City of Grand Island, is largely arid or semi-arid country possessing fertile soil, which soil requires the artificial application of water to it for the purpose of developing its fruitfulness and which, without such artificial application of water, will produce little or meager crops. The soil and climatic conditions of such area are peculiarly adapted to crops of high water requirement, which crops are the most valuable and economically the most useful for the said area. In any normal year the period of least rainfall in said area is in the months of July, August and September, during which time there is very great need of water. In the drainage basin of the said Platte and North Platte Rivers, between the said State line dividing the State of Nebraska from the State of Wyoming, and the said City of Grand Island, Nebraska, there are no tributaries of the said North Platte and Platte Rivers supplying any substantial amount of water, and the only means of supplementing the rainfall (the natural supply of water) is by irrigation from the said Platte and North Platte Rivers, and chiefly from water originating in the upper part of the North Platte Basin in Colorado and Wyoming.

Fifth.

Commencing in the year 1882, and increasingly as the said area under consideration became settled by inhabitants, the waters of the said Platte and North Platte Rivers have been diverted for domestic purposes, and also have been diverted by appropriately constructed irrigation systems for the purposes of irrigation. As the practicability and desirability of irrigation and power became proved and as the engineering art progressed, and as capital became available for that purpose, irrigation projects, and, in the case of your petitioner, irrigation and power projects in Nebraska were and are being developed which divert waters from said streams and put the same to beneficial uses. Such uses are endangered by the wrongful acts of defendant hereinafter complained of. The said lands and people so entitled to water rights in the said Platte and North Platte Rivers are dependent almost entirely upon the waters of the said rivers, and in the case of your petitioner entirely upon the waters of the North Platte River, and when water cannot be delivered to petitioner under its allowed water filings from the said river, its facilities will become unproductive, and the labor and money expended upon them will become wasted.

Sixth.

The lands irrigated from the North Platte and Platte Rivers in Nebraska lie almost entirely in Scottsbluff, Morrill, Garden, Keith, Lincoln, Dawson and Buffalo Counties, Nebraska, and the agricultural developments based upon irrigation are and for more than forty-five years have been practically the sole basis of all wealth in said counties, and practically the entire population of said counties is dependent directly or indirectly upon the production of crops by irrigation for its means of subsistence. The said above de-

scribed area has increased in population since the year 1885 from approximately thirty thousand (30,000) people to approximately one hundred twenty thousand (120,000) people at the present time. The value of all crops grown in said area has increased from $1,476,287.54 in 1885 to $34,170,000.00 in 1929.

By reason of the development of the farm lands in the said area by irrigation, the said valley has been brought to a high state of civilization wherein the various arts, crafts and sciences have flourished; schools have been built; other public buildings have been erected; thousands of farm homes have been made wherein tens of thousands of farmers have lived a peaceful, happy, prosperous, and contented life. In said valley many cities, towns, and villages have been built with population ranging as high as twelve thousand (12,000) in North Platte, eleven thousand (11,000) in Scottsbluff-Gering, eight thousand five hundred (8,500) in Kearney, and eighteen thousand (18,000) in Grand Island.

Seven beet sugar factories have been built in Nebraska in said North Platte and Platte Valley, representing a capital investment of four million dollars ($4,000,000), and the said factories annually purchase from beet growers of said valley in Nebraska one million, two hundred twenty-five thousand (1,225,000) tons of sugar beets for which they pay annually to said beet growers the sum of seven million dollars ($7,000,000). The operation of said factories is entirely dependent upon a supply of sugar beets grown in said valley, which supply can only be made available by the use of water for the purpose of irrigation.

The value of irrigation works constructed in Nebraska (including canals, laterals, diversion works, etc.) for the purpose of irrigating the lands described herein from the Platte and North Platte Rivers is approximately fifty mil-

lion dollars ($50,000,000). The value of petitioner's power plant which is being constructed, including power houses, canals and diversion systems for the purpose of generating, distributing and selling electric energy for lighting, heating and other purposes together with its irrigation facilities, will be approximately Nine Million Seven Hundred Thousand Dollars ($9,700,000).

Petitioner, when its facilities have been completed, will be able to serve part or all of the above named area either with its irrigation or power facilities.

Seventh.

Although in the early development of the common law in the State of Nebraska the doctrine of riparian rights was recognized as the basis of the correlative rights of individuals and corporations in the flowing waters of the State of Nebraska, by a series of legislative enactments and judicial decisions the doctrine of appropriation has become recognized and applied, so that for a period of more than fifty years last past, in the area under consideration, namely the North Platte and Platte River counties from the City of Grand Island, Nebraska, west, it has been legally recognized that the waters of the North Platte and Platte Rivers have been subject to appropriation. The appropriation of water for domestic, agricultural and manufacturing purposes is now and for many years last past has been based on the principle that priority in time bestows priority of right. In the year 1889, at the twenty-first legislative assembly of the State of Nebraska, said legislature adopted laws authorizing and regulating the appropriation of water from the naturally flowing streams of the State of Nebraska, and providing as follows, to wit:

"As between appropriations, the one first in time is first in right."

In the year 1895, at the twenty-fourth session of the legislative assembly of the State of Nebraska, said legislative assembly adopted a complete and comprehensive system of laws regulating appropriations of water of natural streams and lakes, for irrigation purposes, which laws with certain relatively unimportant modifications, changes and developments, have remained in force in the State of Nebraska at all times since their adoption in the year 1895. That among other provisions of such 1895 legislation were the following provisions, to-wit:

> SEC. 42. "The water of every natural stream not heretofore appropriated, within the State of Nebraska, is hereby declared to be the property of the public, and is dedicated to the use of the people of the State, subject to appropriation as heretofore provided."
>
> SEC. 43. "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purposes, but when the waters of any natural stream are not sufficient for the use of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes."

Such sections, in substantially the same language, have been a portion of the statutes of the State of Nebraska ever since their adoption in 1895, and in the year 1920, when the State of Nebraska adopted a new constitution, such provisions were in substance embodied therein and now appear as Sections 4, 5 and 6, Article XV, of said Constitution, in the following language:

SECTION 4. "The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want."

SECTION 5. "The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the State for beneficial purposes, subject to the provisions of the following section."

SECTION 6. "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. Provided, no inferior right to the use of the waters of this State shall be acquired by a superior right without just compensation therefor to the inferior user."

The said legislation of 1895 was in general copied after the provisions of the statutes of the State of Wyoming upon the same subject; and the doctrine that the waters of natural streams are owned by the State and dedicated to the use of the people, and the doctrine of appropriation of waters for beneficial uses, including irrigation, is and has been recognized and enforced upon the public streams of the States of Nebraska and Wyoming, including the North Platte and Platte Rivers, for more than forty years. Prior to such 1895 legislation, such doctrine was for all practical purposes in force in said area, and said legislation of 1895, ratifying, recognizing, and authorizing the appropriations previously made, made proper and careful provisions for appropriations to be made subsequent to said date as well

as providing for the ascertainment and adjudication of water rights previously acquired by appropriation. At present and since 1895 all permits for the appropriation of water for agricultural and manufacturing purposes in the naturally flowing streams of Nebraska have been made through the administrative officers and such officers have been charged with and have exercised the duties of administering such appropriations in accordance with the doctrine of priority of appropriation.

Eighth.

Such doctrine of appropriation was legally recognized and applied both in the States of Wyoming and Nebraska prior to the date of said 1895 legislation in Nebraska, and prior to the date of the Wyoming legislation upon which the said 1895 legislation was modeled, namely 1890. Such legislation in each State has at all times provided and still does provide for State administration of water, both by obtaining a State permit for diversion, and by administration and regulation of such diversions through State officers.

Ninth.

In the year 1902 the Congress of the United States passed an act known as the "Reclamation Act," which provided for the construction in various portions of the United States, including the State of Wyoming, of reservoirs for the purpose of storage of waters otherwise being wasted and not put to beneficial use, such storage being for the purpose of making available, during the crop growing season, waters which would otherwise be allowed to pass down the channel of the stream during the season when no crops were growing, and which waters could not be directly applied to any beneficial use upon agricultural lands. Acting under the authority of such Reclamation Act, the Secre-

tary of the Interior of the United States prepared plans for a project now known as "The North Platte Project" and pursuant to such plans made application to the State Engineer of the State of Wyoming on the 6th day of December, 1904, for permission to construct reservoirs, for the purpose of storage of water of the North Platte River, which application was granted by the said State Engineer, and which was assigned a priority date of the 6th day of December, 1904. That such applications included the right to store in the Pathfinder Reservoir, at a point forty miles southwest of Casper, Wyoming, one million seventy thousand (1,070,000) acre feet and that said Pathfinder Reservoir was constructed and completed in the month of June, 1909, immediately placed in operation and at all times has been operated by the Bureau of Reclamation of the United States Department of the Interior under the authority and subject to the irrigation laws of the defendant, State of Wyoming. A supplemental and regulating reservoir for the purpose of properly administering the storage water so appropriated was subsequently built and completed in the month of July, 1927, at Guernsey, Wyoming, at a point approximately fifty miles southeast of Douglas, Wyoming, which provided, in addition to its original purposes, storage for approximately seventy-one thousand (71,000) acre feet of water. Ever since said date said Guernsey Reservoir has also been operated for the purposes above named, including storage of waters for the purpose of ultimately using the same for irrigation.

There are also other storage and regulating reservoirs in said system with a total storage capacity of approximately 77,000 acre feet.

Such storage water was appropriated and used for the purpose of reclaiming and rendering productive large areas of land which would otherwise be arid and unproductive,

and canals were constructed for the purpose of carrying such storage waters to the lands so to be reclaimed. Such Pathfinder and Guernsey storage reservoirs were created by constructing dams across the main channel of said rivers, and using said channel and the natural contours of the land on either side of the river bed as the reservoir. The natural channel of the stream has at all times been used for the purpose of conducting storage water, when released, to the diversion points on the river from which the canals commenced diverting to the points where the waters would be of beneficial use, and in conducting such storage waters to such points of diversion such storage waters have at all times been mingled with the natural flow of said streams, the quantity to which any diversion canal was entitled being determined by bookkeeping based upon measurements of the quantity released and measurements of the flow. The canals so supplied with storage water from such reclamation projects were and are entitled, by reason of appropriation of waters and priorities granted by the respective States, also to certain rights in the direct flow of said streams; and under an amendment to the United States Reclamation Act passed in the year 1911, and known as the Warren Act (Act of February 21, 1911, Ch. 141, Secs. 1, 2, and 3, U. S. C. A., Title 43, Sections 523, 524, 525), the United States Bureau of Reclamation has entered into contracts with irrigation projects of water with earlier priorities to supplement their direct flow rights by storage water in consideration of such projects paying to the United States Government certain stipulated sums representing a computation of the approximate proportion of the cost of construction and maintenance of such reservoirs, canals, etc.

Tenth.

All of the acts of the United States Bureau of Reclamation in operating said reservoirs, in impounding waters,

and filling the same, and in releasing such waters, are subject to the authority of the State of Wyoming, defendant herein, and said defendant State of Wyoming and its officers are charged with the duty of administering such waters fairly and impartially and of requiring that water should not be taken for storage when needed for direct flow appropriators, and are charged with the duty of preventing appropriators with junior rights from taking water which is required by appropriators with senior rights. Such duties extend to the duty of controlling appropriators whose appropriations are made and taken under the authority of the State of Wyoming from encroaching upon the water rights of Nebraska appropriators whose rights are prior to Wyoming appropriators, and from diminishing the flow of said streams so that such Nebraska prior appropriators are unable to obtain the waters included within their appropriations. With the authority of the defendant State of Wyoming, the officers in charge of such dams and reservoirs have continually obstructed, and threaten to continue obstructing, the streams and held back waters for storage purposes, thereby diminishing the direct flow and depriving Nebraska water appropriators, both senior and junior in date to such storage appropriation, from obtaining direct flow water to which they are entitled by interstate common law. Upon information and belief, complainant, by its duly constituted officers, has repeatedly protested by telephone, by telegram, verbally, and by letter not only to the defendant State of Wyoming and its officers charged with the duty of administering the waters of the North Platte River in the State of Wyoming, as hereinbefore described, but also to the administrative officers of the United States Bureau of Reclamation and to the Washington office of the United States Bureau of Reclamation, but that said defendant, the State of Wyoming, and each and every one of such officers to whom such protests have been made,

have failed, neglected, and refused to aid the complainant, but on the contrary said officers, and said State of Wyoming through its duly authorized and constituted officers, have declared their intention to administer the waters of the North Platte River in the State of Wyoming without regard to the rights and other claims of the complainant and its appropriators, including the petitioner. Unless restrained by this Court, the defendant will continue to permit, aid, and abet its appropriator, the United States Bureau of Reclamation, in its wrongful, illegal and unjustifiable impounding of direct flow water to which the complainant's appropriators are entitled, thereby depriving Nebraska appropriators and especially this petitioner of many thousands of acre feet of water in each year hereafter.

Eleventh.

In accordance with their respective laws, the complainant State of Nebraska and defendant State of Wyoming have from time to time issued permits and adjudicated priorities for the diversion of water from the Platte and North Platte rivers, applying in such issuance of permits and such adjudications substantially the same rule, namely, that priority in time of first appropriation gives priority of right; and the further rule that when an irrigation project is completed its priority date relates back to the date when public notice was first given and filing was first made showing an intention to appropriate for such purpose, provided such notice and filing was, within a reasonable time, followed by actual construction promptly commenced and diligently carried to completion, including the actual application of the water to beneficial use. Such priority dates are, and have been for many years last past, matters of public record in the offices of the State Engineers of the complainant and defendant respectively, and

have at all times been available for inspection by any person interested therein.

This Court, in controversies between States as to the waters of interstate streams, has declared the rule of interstate common law to be that each of such States is entitled to an apportionment of the waters of such streams; and in the case of two States, each recognizing and applying the rules of appropriation of waters for irrigation purposes, this Court has held in the case of *Wyoming* v. *Colorado*, 259 U. S. 419, that in such apportionment the respective priorities in each State will govern.

The complainant State of Nebraska, by interstate common law, is entitled to a division and apportionment of the waters of the North Platte River, in order that (at all times having due regard to priorities of Wyoming water rights which are senior to the priorities of Nebraska water rights) complainant may enable its appropriators, including petitioner, to enjoy their water rights without interference by junior appropriators, whether in Wyoming or Nebraska.

The flow of the North Platte River varies from year to year, in most years being inadequate to supply the demands for the entire irrigating season of all appropriators of direct flow waters in both States, and in some years such inadequacy requires, in the due and lawful administration of the river, the denial of all waters to junior appropriators of more recent dates. The date of priority which would entitle any appropriator in either State to water from said stream varies from year to year and from month to month in any year according to the quantity of water flowing in the river at that particular time; but petitioner alleges that careful measurements of the flow of said stream are continuously made at various points along its course, and the quantity of water available for diversion is at all times known to the defendant State of Wyoming, and the prior-

ity dates of all appropriators in both States are available and open to said defendant, so that at all times said defendant has known, or in the exercise of reasonable diligence would have known, the quantity of water which it should allow to cross the State line.

Notwithstanding said facts, the defendant, in the administration of the waters of the North Platte River which pass through its territory, has for many years last past, continuously and repeatedly, violated the rule of priority and deprived the complainant of the water to which it is equitably entitled by diverting said waters for use upon lands having junior rights, when said waters are needed in Nebraska by persons having a senior priority; and has wrongfully aided, assisted, and abetted such junior appropriators in their wrongful and unlawful acts of taking waters which are the property of the State of Nebraska, thereby depriving the complainant of its use of the same upon Nebraska lands having prior and senior appropriation rights.

Upon information and belief, complainant, by its duly authorized officers, has repeatedly complained to the defendant and to the officers of the defendant charged with the duty of administering the waters of the North Platte River, urging upon the defendant the necessity and duty resting upon it of recognizing and respecting the rights of the State of Nebraska and its appropriators in the waters of the North Platte River, informing said defendant and its officers of the priority dates which should be respected at the time of such complaint, in order to give Nebraska its equitable apportionment of the waters of said North Platte River, and offering to cooperate with defendant in administering such waters and in affording information necessary in the proper administration of such waters. Notwithstanding such protests and complaints, said defendant,

through its duly authorized administrative officers, has expressly declared its intention of permitting any Wyoming appropriator to divert and use waters of the North Platte River regardless of the fact that many such appropriators are junior and inferior in right to the State of Nebraska and its appropriators, and upon information and belief said defendant, through its duly authorized administrative officers, has expressly declared to the complainant and its duly authorized officers that it will not recognize any Nebraska priorities nor will it require any appropriators in the State of Wyoming to close their headgates for the purpose of enabling water to reach the State of Nebraska, even though such Wyoming appropriations are many years junior and inferior to those of the State of Nebraska and to those of Nebraska appropriators, who, by reason of such diversions of such Wyoming appropriators, are being required to go without water. The administrative interpretation and the practical interpretation by the defendant and its duly authorized administrative officers of the irrigation laws of Wyoming is such that, unless restrained by the order of this Court, said defendant and its administrative officers will permit Wyoming appropriators to take water regardless of priorities existing in the State of Nebraska, and this petitioner therefore avers that defendant is intentionally violating the rights of complainant and this petitioner to a distribution of the waters of the North Platte River, and is intentionally appropriating to itself, and for the benefit of its citizens, waters which belong to complainant and this petitioner, and that the diversions so wrongfully and illegally made by the defendant, as herein in this paragraph alleged, have amounted during the past several years to an average of many thousand acre feet—in some years to as much as fifty or sixty thousand acre feet—and that illegal diversions and appropriations will, unless re-

strained by this Court, continue in increasing degree, to the great damage and detriment of petitioner.

The petitioner asks this Court to establish a schedule of priorities, including a schedule for petitioner, in accordance with the respective adjudications of the complainant and the defendant, and that defendant be required, in permiting diversions of water from the North Platte River in Wyoming, at all times to prevent such diversions as will interfere with Nebraska priorities because of the flow of the river at any particular time.

Twelfth.

Upon information and belief, during the last eighteen months and commencing in approximately March of 1933, there has been developed by defendant and the United States Bureau of Reclamation, plans for further projects known as the Casper-Alcova and Seminoe Reservoir projects which have for their purposes the irrigation of approximately eighty-five thousand (85,000) acres of land in the North Platte drainage basin, using therefor exclusively waters of the North Platte River, such acreage area lying west, northwest and southwest of the City of Casper, Wyoming. For the purpose of creating a supply of water for the irrigation of such acreage upon information and belief, said United States Bureau of Reclamation and defendant plan to, and will unless restrained by this Court, construct a dam across the channel of the North Platte River at a point approximately twenty miles south of the Pathfinder Dam, to create a channel reservoir known as the Seminoe Reservoir, with a capacity of one million (1,000,000) acre feet, and another supplementary and regulating reservoir lying in the channel at the point known as Alcova, approximately twelve miles below the Pathfinder Reservoir, such Alcova Reservoir having a capacity of approximately one hundred sixty-five thousand (165,000) acre feet.

The waters which will be impounded in said Alcova Reservoir will be "dead storage" for the reason that said quantity of water must be retained in said reservoir at all times during the irrigating season, while there is need for diversion of any water to the lands to be irrigated, since the diversion point of the proposed canal is so high that water can be diverted through it only when said reservoir is entirely filled.

Whereas the present storage reservoirs on said North Platte River in Wyoming now absorb approximately seventy per cent of the average flow of said river, upon information and belief, said Seminoe and Alcova reservoirs will double the storage capacity of reservoirs on said river, and will absorb not only all the normal flow of said river in any year, but also all surplus which may pass down said river in any year of extraordinary flood.

The defendant has allotted to the Casper-Alcova project a permit to store water in such quantities and, in addition, has allotted to such project direct flow diversion and irrigation rights for the full amount of said eighty-five thousand (85,000) acres of land, with a priority of December 6, 1904. Such direct flow rights will require the use during the irrigation season of approximately two hundred fifty thousand acre feet of water. In truth and in fact the priority date allotted by defendant, to the said Casper-Alcova project is wholly and entirely fictitious; the true priority date of any appropriation is in truth and in fact as above alleged; upon information and belief work did not commence upon said project before the month of March, 1934, and the priority date to which such project would be entitled cannot be earlier than that of petitioner. Between December 6, 1904, and March of 1934, appropriations of waters of the North Platte and Platte Rivers for approximately sixty-nine thou-

sand (69,000) acres of land in the State of Nebraska have been allowed and developed with priorities properly assigned to them, and such Nebraska projects are entitled to priorities over the said Casper-Alcova project.

In reliance on the Nebraska appropriations large investments have been made, so that it would be unjust and inequitable to create, in the manner above described, priorities senior to such appropriations, and defendant is estopped to assert any such priorities.

For many years, the appropriation rights both in Wyoming and Nebraska which are entitled to use waters for direct application to the land, and which have been in actual successful operation, applying such waters to direct beneficial use, have absorbed all of the flow available in the irrigating season in normal years, leaving for such Casper-Alcova and Seminoe projects, if properly administered according to priorities, only such extraordinary flood waters as may pass down the channel of the North Platte River in unusual seasons; and for storage only the water not needed in the storage season for filling the Pathfinder and Guernsey Reservoirs.

In any event, regardless of the date of priority assigned to the said Casper-Alcova project, the defendant, pursuant to its laws and the administrative interpretation thereof, as hereinbefore alleged, will at all times, unless restrained by this Court, allow the diversion and appropriation of the waters of the North Platte River, both for the storage and for the direct flow rights upon said Casper-Alcova and Seminoe projects, regardless of any priorities existing in the State of Nebraska, and respecting only such priorities as have been allotted by the authorities of the State of Wyoming. The amount of water required for said storage and direct flow rights hereinbefore alleged in connection with the Casper-Alcova and Seminoe projects will absorb all

waters flowing at any time of the year and in any year down to the point of diversion at Alcova, Wyoming, and will leave no water flowing past such point except such as the United States Bureau of Reclamation may be able to induce the State of Wyoming to release for the purpose of filling the reservoir at Guernsey, Wyoming. The development of the Casper-Alcova, and Seminoe projects, as, upon information and belief, planned and threatened by the defendant and by the United States Bureau of Reclamation, will completely exhaust all of the waters of the North Platte River above the State line between the State of Wyoming and the State of Nebraska, except for such small quantities of water as may flow into the stream by way of accretion between the point of Alcova and Guernsey; and, as petitioner is informed and verily believes, all of such accretions will be used for the purpose of filling the Guernsey reservoir, and all of the accretions below Guernsey and between Guernsey and the State line will be used by Wyoming junior appropriators, leaving practically no water flowing across the State line into the State of Nebraska. Such plans of the defendant, and the threatened acts of the defendant and of the appropriators acting under and by virtue of its authority, will completely ruin petitioner and the large and prosperous area in the State of Nebraska hereinbefore described, driving thousands of people from their homes; depriving thousands of people of the fruits of their investments and of the accumulations of their lifetime; and will deprive the State of Nebraska and thousands of its citizens of their property without due process of law, and will make desolate a region of the State of Nebraska at present a prosperous and happy series of communities.

Thirteenth.

The land in Nebraska which is at present in cultivation by the use of water for irrigation purposes is fertile and

highly productive, having been developed to a high state of cultivation; and many valuable improvements have been erected upon said farms, still further increasing their usefulness; and making it possible to cultivate and store the crops grown on said lands in the most modern and efficient manner. The lands near Casper in Wyoming which the defendant proposes to reclaim by the Casper-Alcova and Seminoe projects are waste lands, fit only for grazing and with little or no prospect of usefulness for agricultural purposes, and can never be brought to the stage of usefulness of the said Nebraska lands. The cost of said Casper-Alcova and Seminoe projects must be paid largely out of the land reclaimed, and such cost so to be charged to such land, upon information and belief, will be not less than $80.00 per acre, to be repaid at the rate of $2.00 per acre per year for a period of forty years plus interest on the deferred installments, and it is doubtful whether the land will ever produce sufficient to make such payments and in addition to pay annual operation and maintenance charges; and it is an unjust distribution of the waters of said river to take them from established and actually valuable districts (thereby destroying the economic value of such districts) and to give them to a speculative and doubtful area, where their value would be wholly speculative, with a reasonable prospect of complete waste of such waters.

Fourteenth.

Included in the lands operating under the canals constructed by the United States Reclamation Bureau for the purpose of conducting the storage waters impounded in the Pathfinder and Guernsey reservoirs are many acres of Nebraska lands. Such lands, by reason of the priorities established for such Pathfinder and Guernsey reservoirs, have storage water rights of a priority of December 6, 1904, and such lands are chiefly dependent upon such

storage for their water. Other Nebraska irrigation districts have acquired rights in said reservoirs and the storage waters therein by means of "Warren Act contracts", and are dependent largely upon such storage water for a supply of water supplementing their direct flow rights. Even if the full storage capacity created by said "North Platte Project" could be utilized, and even when such reservoirs are completely filled, there is insufficient storage water to supply the needs of all lands entitled to such storage water under the two classes of contracts herein described. The acts of defendant in assigning to said Casper-Alcova project a priority date equal to that of the Pathfinder and Guernsey reservoirs directly diminishes the water available for storage in said reservoirs, for the reason that there is not now any surplus of water available for storage in any normal year over and above the amount necessary to fill both such reservoirs, and in years when the flow is less than normal there is insufficient to fill said reservoirs. Upon information and belief, said Casper-Alcova project will create an additional demand upon said river for two hundred fifty thousand (250,000) acre feet direct flow annually and one hundred sixty-five thousand (165,000) acre feet of storage.

Upon information and belief, defendant threatens to and will, unless restrained by this Court, divide the available water proportionately between said Casper-Alcova project and the said Pathfinder and Guernsey reservoirs, thereby irreparably damaging petitioner and the land of Nebraska entitled to storage waters from said Pathfinder and Guernsey reservoirs.

Fifteenth.

The wrongs complained of herein have been and still are matters of acute controversy between appropriators of water in Nebraska and Wyoming, respectively. Many

suits in equity and at law are threatened for the purpose of obtaining relief as between and among such appropriators, which will result in a large volume of litigation, whereby still greater confusion will result in the administration of the waters of said river. This Court should take jurisdiction of said controversy in order to avoid a multiplicity of suits and in order that full, complete, and equitable relief to all parties may be afforded in one action.

Sixteenth.

Wherefore, this petitioner, having an interest in the subject matter herein, which is still in litigation and under consideration of this Court, respectfully prays that an order may be entered permitting it to intervene and assert its interest in this suit, such intervention to be in subordination to and in recognition of the propriety of the main proceeding; and that the petitioner may have further relief in the premises in that this Court may find and determine:

(1) The share of the waters of the North Platte River to which the petitioner is entitled for its agricultural and manufacturing uses, and the respective priorities of the various appropriators and purported appropriators of such waters in the State of Wyoming and in the State of Nebraska, including those whose applications for water have been approved and those whose applications have not been approved; also what share of the waters of the Platte River such appropriators and purported appropriaters are entitled to;

(2) That defendant be enjoined and restrained from permitting the impounding of waters for storage purposes, already complained of, and that defendant be enjoined and restrained from diverting and permitting the diversion to Wyoming junior appropriators of waters to the detriment of Nebraska senior appropriators;

(3) That the Court fix and determine the priorities of the Casper-Alcova and Seminoe reservoir projects hereinbefore referred to in relation to such Nebraska appropriators, including the petitioner, as have appropriations upon said North Platte and Platte Rivers;

(4) That defendant be enjoined from permitting the impounding of any waters for storage in any reservoir at any time when said waters are needed for direct flow appropriators or in any event when said waters are needed by appropriators whose rights are senior to the priority date of such reservoir of defendant;

(5) That said defendant be, by order of this Court, required to permit the waters of the North Platte River to reach the State line between Nebraska and Wyoming in such quantity as will afford to the domestic, agricultural and manufacturing users, respectively, in the State of Nebraska, their rightful apportionment of the waters of the North Platte River, and for that purpose that defendant be required to prevent the appropriation in Wyoming by appropriators in that State of waters to the detriment of the petitioner in its rightful apportionment of waters in the North Platte River as determined by this Court.

Petitioner further prays for such other, further and different relief as to the Court may seem just and equitable.

PLATTE VALLEY PUBLIC POWER AND
IRRIGATION DISTRICT,
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